

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEMARCUS FINLEY,

Petitioner,

v.

MARK MCCULLICK,

Respondent.

2:17-cv-11976-TGB

**ORDER DENYING AS MOOT
PETITIONER'S MOTION FOR
EXTENSION OF TIME TO
FILE A NOTICE OF APPEAL**

Petitioner Demarcus Finley, who proceeds pro se, moves for an extension to file a notice of appeal of this Court's Order denying his petition for writ of habeas corpus. ECF No. 39. Mr. Finley states that due to restrictions stemming from the pandemic, he is not able to access the law library at Chippewa Correctional Facility, where he is incarcerated. At the same time, Mr. Finley has also moved for reconsideration of this Court's Order issued on January 25, 2021. ECF No. 38. Mr. Finley does not specify as to whether he moves for reconsideration under Federal Rules of Civil Procedure 60(b) or Local Rule 7.1(h). E.D. Mich. L.R. 7.1. So, the Court will construe his motion for reconsideration as a motion under Federal Rules of Civil Procedure 60(b) because he references a 30-day deadline to file a notice of appeal, which is closer in form to a Rule 60(b) motion than a motion under Local Rule 7.1(h).

Mr. Finley is directed to take notice of Federal Rules of Appellate Procedure 4(a)(4)(A)(vi). The Rule states that “the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion” if a party files in the district court certain motions, including “for relief under Rule 60 *if the motion is filed no later than 28 days after the judgment is entered.*” *Id.* (emphasis added). In other words, so long as the motion for reconsideration is filed within 28 days of the district court’s judgment, a Rule 60(b) motion for reconsideration automatically tolls the period for filing a notice of appeal until after the district court has decided on the motion for reconsideration.

Here, the Court issued its judgment on January 25, 2021. ECF No. 35. Mr. Finley moved for reconsideration on February 1, 2021, ECF No. 38, which is well within the 28 days deadline. This automatically tolls the period for filing a notice of appeal. After the Court issues its judgment on Mr. Finley’s motion for reconsideration, he will have 21 days to file a notice of appeal.

As such, Mr. Finley’s motion for an extension is **DENIED** as moot.

IT IS SO ORDERED.

Dated: March 3, 2021

s/Terrence G. Berg

TERRENCE G. BERG

UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that this Order was electronically filed, and the parties and/or counsel of record were served on March 3, 2021.

s/A. Chubb
Case Manager